

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et

al.,

Plaintiffs,

vs.

STATE OF WASHINGTON, et al.,

Defendants.

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DEPOSITION UPON ORAL EXAMINATION OF

RUSS LADLEY

April 25, 2006

9:30 a.m.

801 Second Avenue
Seattle, Washington

Carl T. Beck, Court Reporter

CCR 2952

1 believe, and the Sportsmen's --excuse me, 7 and 8 --
2 Restoration Sites 7 and 8.

3 Q And they were -- just looking in the far-right column on
4 page three of Exhibit 5, those were ranked third and
5 thirteenth, respectively?

6 A Correct.

7 Q Do you know who provided the funding for these projects?

8 A The Puyallup provided some of it. The bulk was through
9 Salmon Recovery Funding Board monies. I think the County
10 and the Conservation District also threw in some money.

11 Q Were there any culvert repair projects listed in this
12 proposed Restoration Catalog?

13 A Well, both these involve culvert repairs, if that's what
14 you're getting at.

15 Q Okay. Both 6 and 7 did?

16 A No. Both 7 and 8.

17 Q Or 7 and 8, rather. Okay. Were there any others that did?

18 A Yes.

19 Q Which ones?

20 A No. 3, Freeman Road; No. 2, Oxbow. I believe that's it.

21 Q And when you say these particular restoration projects
22 involved culvert repairs, were they the exclusive focus of
23 the repair or were they part of other activities that were
24 proposed?

25 A In this case, they were, I believe, the exclusive focus of

1 the work.

2 Q For the Oxbow Wetland Property, Restoration Site 2, do you
3 know who owned that culvert?

4 A That's been a question for -- that's been debated for quite
5 awhile. I don't know who owns it.

6 Q Who's debated the question of who owns it?

7 A Pierce County and the Puyallup Tribe have debated it.

8 Q And who do you think the owner is, or who does the Tribe
9 think the owner is?

10 A The County owns and maintains the levee. I would assume
11 they own the Oxbow, but they've thus far denied that
12 relationship.

13 Q So the County says it's the Tribe's?

14 A No. They say they don't know who owns it.

15 Q And in terms of the Freeman Road, No. 3 -- Project No. 3 --
16 do you know who owns that culvert?

17 A You know, I'm not sure that is even a culvert there anymore.

18 Q You also mentioned Project numbers 7 and 8. No. 7 is the
19 Sportsmen's Club Wetland.

20 Do you know what road or whose road and culvert would
21 be involved in that project?

22 A Well, it's my understanding it's a County levee, and they
23 have an easement over -- or through the Sportsmen's Club's
24 property.

25 Q So the Sportsmen's Club owns the property?

1 A They own the property.

2 Q And the County has an easement?

3 A Correct. That's my understanding.

4 Q For the 96th Street Wetland, that's Project No. 8, do you
5 know who owns the road and the culvert that's blocking for
6 that particular project?

7 A Yeah. In this case, it's not actually a road. It's just a
8 levee, and it's a County levee.

9 Q The introductory pages -- or the introduction on page one
10 seems to focus on a problem of channelization on the
11 Puyallup River.

12 My understanding is that channelization would restrict
13 the flow of a river into a main channel and then eliminate
14 its ability to spread out into side channels. Is that a
15 fair --

16 A That is fair to say.

17 Q The report seems to indicate that there are over 45 miles of
18 levees on the Puyallup, White, and Carbon Rivers. Has that
19 number changed since this catalog was prepared in 1999?

20 A It has not. I would emphasize the fact that the 45 miles
21 could be construed as 90 miles, though, because it's levees
22 on both sides of the river.

23 Q Okay.

24 A If that makes sense.

25 Q Uh-huh. Yes.

1 publication called HighCountry News, and the first few
2 paragraphs discuss a particular location where you point out
3 a culvert to a reporter. Do you recall doing this?

4 A Yeah. I think I do recollect it now.

5 Q Do you remember where this particular culvert is?

6 A Yeah. It's a culvert tidegate, lower Puyallup River.

7 Q What's a "tidegate"?

8 A It's a culvert that has a swing plate on it to restrict flow
9 to one direction.

10 Q And where specifically was this culvert located?

11 A This is Restoration Site No. 2, the Oxbow Wetland Property,
12 river mile 4.8.

13 Q And if I'm not mistaken, you mentioned that this was
14 involving a levee, and there was an ownership dispute
15 between Pierce County and the Tribe as to who was
16 responsible for this --

17 A I would also interject that Fife could be one of the owners.

18 Q And can you tell me what particular species use the stream
19 where this particular culvert is located?

20 A We really don't know since it's been there for so long.

21 Q How did you become aware of it?

22 A Floating down the river in a boat one day, we could see the
23 tidegate from the river.

24 Q Has this particular culvert been repaired yet?

25 A No. It has not.

1 Q In terms of the Puyallup Tribe's priority for repairing this
2 particular culvert, it appears from Exhibit 5 that it was
3 ranked 11th among the 13 projects that you identified. Is
4 that consistent with how you still view the priority of this
5 project?

6 A The priority has changed.

7 Q How has it changed?

8 A At the time of the catalog, it was undeveloped Oxbow Lake.

9 Q And what is it now?

10 A It's rapidly becoming a lake surrounded by 900 homes.

11 Q So would I understand correctly that because development is
12 encroaching in this area, that its priority has been reduced
13 substantially?

14 A It may change. Its priority may change.

15 Q Have you -- I assume that you've communicated with the
16 County or the City of Fife regarding this particular
17 culvert?

18 A We have.

19 Q And what response did they have?

20 A They are very concerned about flood liability with the
21 tidegate: any alterations, who assumes the liability.

22 Q Is there another tidegate of concern to the Puyallup Tribe
23 at Clear Creek beneath State Route 167?

24 A Yes, there is.

25 Q What's that situation about?

1 A Yeah, I don't.

2 Q Do you know whether there are any State-owned culverts that
3 affect the operation of Puyallup Tribal hatcheries?

4 A State owned, no.

5 Q Are there privately owned --

6 A Yes.

7 Q -- that affect? Are there County or City culverts that
8 affect?

9 A Yes.

10 Q Do you know approximately how many or where they're located?

11 A Diru Creek there's three affecting the hatchery.

12 Q And how about Clarks Creek?

13 A No culverts affect that.

14 Q Do the Diru Creek culverts affect the amount of salmon
15 returning to the hatcheries?

16 A They do.

17 Q And again, those are not State-owned culverts?

18 A Correct.

19 Q The Tribes have admitted in prior Discovery in this case
20 that State-owned culverts which block fish passenge are not
21 the only cause for reductions in the amount of the
22 anadromous fish that would otherwise return to pass through
23 the Tribes' Usual and Accustomed areas.

24 Do you agree that there are other reasons beside State-
25 owned culverts that some salmon stocks aren't doing better?

CERTIFICATE

STATE OF WASHINGTON)

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COUNTY OF KING)

I, Carl T. Beck, a Notary Public in and for the State of Washington hereby certify:

That the foregoing deposition was taken before me at the time and place therein set forth;

That the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; and that the testimony of the witness and all objections made at the time of the examination were recorded by voice recognition by me, and thereafter transcribed under my direction;

That the foregoing transcript is a true record of the testimony given by the witness and of all objections made at the time of the examination, to the best of my ability.

I further certify that I am in no way related to any party to this matter nor to any of counsel, nor do I have any interest in the matter.

Witness my hand and seal this the 8th day of May, 2006.

CARL T. BECK, Notary
Public in and for the State
Of Washington, residing at
King. Commission expires
June 26, 2007